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Attorneys for Plaintiff

SEAN JACKSON

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SEAN JACKSON,

Plaintiffs,

V.

CAPITAL ONE BANK (USA) N A

Defendant

) Case No.:

{ COMPLAINT AND JURY

{ COMPLEX DEMAND }

} (Unlawful Debt Collection Practices)

COMPLAINT

SEAN JACKSON (Plaintiff), by his attorney, alleges the following against

CAPITAL ONE BANK (USA), N.A., (Defendant):

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone

1 Consumer Protection Act (hereinafter “TCPA”), 47 U.S.C. § 227 *et seq* and
2 in violation of California’s Rosenthal Fair Debt Collection Practices Act
3 (hereinafter “RFDCPA”), Ca Civ. Code § 1788.17.

4

5 **JURISDICTION AND VENUE**

6 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C.
7 §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740
8 (2012), holding that federal and state courts have concurrent jurisdiction over
9 private suits arising under the TCPA.
10
11 3. Venue is proper in the United States District Court for the Central District of
12 California pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within
13 this District and a substantial part of the events or omissions giving rise to the
14 herein claims occurred, or a substantial part of property that is the subject of
15 the action is situated within this District.
16
17

18 **PARTIES**

19 4. Plaintiff is a natural person residing in Los Angeles County, in the city of
20 Long Beach, California.
21
22 5. Defendant is a Virginia corporation doing business in the State of California
23 with its principal place of business located in McLean, Virginia.
24
25 6. At all times relevant to this Complaint, Defendant has acted through its agents
employees, officers, members, directors, heir, successors, assigns, principals,

1 trustees, sureties, subrogees, representatives and insurers.

2 **FACTUAL ALLEGATIONS**

3 7. Defendant is a “person” as defined by 47 U.S.C. § 153 (10).

4 8. Defendant placed collection calls to Plaintiff seeking and attempting to
5 collect on alleged debts incurred through purchases made on credit issued by
6 Defendant.

7 9. Defendant placed collection calls to Plaintiff’s cellular telephone at phone
8 number (562) 208-07XX.

9 10. Defendant places collection calls to Plaintiff from phone numbers including,
11 but not limited to (800) 955-6600.

12 11. Per its prior business practices, Defendant’s calls were placed with an
13 automated dialing system (“auto-dialer”).

14 12. Defendant used an “automatic telephone dialing system”, as defined by 47
15 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect
16 a consumer debt allegedly owed by Plaintiff, SEAN JACKSON.

17 13. Defendant’s calls constituted calls that were not for emergency purposes as
18 defined by 47 U.S.C. § 227(b)(1)(A).

19 14. Defendant’s calls were placed to a telephone number assigned to a cellular
20 telephone service for which Plaintiff incurs a charge for incoming calls
21 pursuant to 47 U.S.C. § 227(b)(1).

22 25

1 15. Defendant never received Plaintiff's "prior express consent" to receive calls
2 using an automatic telephone dialing system or an artificial or prerecorded
3 voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

4 16. On September 7, 2017, Plaintiff called into Defendant's company at phone
5 number (800) 955-6600. Plaintiff spoke with Defendant's female
6 representative and requested that Defendant cease calling Plaintiff's cellular
7 phone.

8 17. During the conversation, Plaintiff gave Defendant both his date of birth and
9 social security number to assist Defendant in accessing his account before
10 asking Defendant to stop calling his cell phone.

11 18. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his
12 cellular telephone and/or to receive Defendant's calls using an automatic
13 telephone dialing system in his conversation with Defendant's representative
14 on September 7, 2017.

15 19. Despite Plaintiff's request to cease, Defendant continued to call Plaintiff's
16 cellular telephone after September 7, 2017.

17 20. Despite Plaintiff's request that Defendant cease placing automated collection
18 calls, Defendant placed at least sixty-one (61) automated calls to Plaintiff's
19 cell phone.

FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227

21. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

22. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

23. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

24. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in
the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT
47 U.S.C. § 227 et. seq.

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

26. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above cited provisions of 47 U.S.C. §
2 227 et seq.

3 27. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
4 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages,
5 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47
6 U.S.C. § 227(b)(3)(C).

7 28. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in
8 the future.
9

10

THIRD CAUSE OF ACTION
DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT
COLLECTION PRACTICES ACT
CA CIV CODE § 1788.17

11

12 29. Plaintiff repeats and incorporates by reference into this cause of action the
13 allegations set forth above at Paragraphs 1-28.

14 30. Defendant violated the RFDCPA based on the following:
15

16 a. Defendant violated the §1788.17 of the RFDCPA by continuously
17 failing to comply with the statutory regulations contained within the
18 FDCPA, 15 U.S.C. § 1692 et seq.
19

20

PRAYER FOR RELIEF

21

22 WHEREFORE, Plaintiff, SEAN JACKSON, respectfully requests judgment
23 be entered against Defendant, CAPITAL ONE BANK (USA), N.A., for the
24 following:
25

FIRST CAUSE OF ACTION

31. For statutory damages of \$500.00 multiplied by the number of negligent violations of the TCPA alleged herein (61); \$30,500.00;

32. Actual damages and compensatory damages according to proof at time of trial;

SECOND CAUSE OF ACTION

33. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful violations of TCPA alleged herein (61); \$91,500.00;

34. Actual damages and compensatory damages according to proof at time of trial;

THIRD CAUSE OF ACTION

35. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt Collection Practices Act:

36. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788.30(b)*:

37. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code* § 1788.30(c), and;

38. Actual damages and compensatory damages according to proof at time of trial;

ON ALL CAUSES OF ACTION

39. Actual damages and compensatory damages according to proof at time of trial:

40. Costs and reasonable attorneys' fees, and:

41. Any other relief that this Honorable Court deems appropriate.

JURY TRIAL DEMAND

42. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED,

DATED: June 26, 2018

The Law Offices of Jeffrey Lohman, P.C.

By: /s/ Alyson J. Dykes

Alyson J. Dykes

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